
STATUTORY INSTRUMENTS

2012 No. 2681

CRIMINAL LAW, ENGLAND AND WALES

The Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment No. 3) Order 2012

Made - - - - 25th October 2012
Laid before Parliament 26th October 2012
Coming into force - - 19th November 2012

The Attorney General makes the following Order in exercise of the powers conferred by section 3(3) of the Prosecution of Offences Act 1985(1).

Citation and commencement

1. This Order may be cited as the Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment No. 3) Order 2012 and comes into force on 19th November 2012.

Amendment of the Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999

2. The Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999(2) is amended as follows.

3. In article 3—

(a) in paragraph (1), for “paragraphs (2) and (3) below” substitute “the following paragraphs of this article”;

(b) after paragraph (1) insert—

“(1A) Proceedings for an offence mentioned in the Schedule to this Order are not specified if they are instituted by way of charge under section 37(7)(d) of the Police and Criminal Evidence Act 1984(3).

(1B) Proceedings for an offence mentioned in the Schedule to this Order are not specified if, at the time when a summons or requisition is issued in respect of the offence, the accused is under the age of 16.”;

(1) 1985 c. 23. Section 3(3) was amended by paragraph 39 of Schedule 7 to the Police Act 1996 (c. 16), paragraph 48 of Schedule 9 to the Police Act 1997 (c. 50), paragraph 47 of Schedule 4 and Part 2 of Schedule 17 to the Serious Organised Crime and Police Act 2005 (c. 15) and paragraph 171 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).
(2) S.I. 1999/904, as amended by S.I. 2012/1635 and S.I. 2012/2067.
(3) 1984 c. 60. Section 37(7)(d) was inserted by paragraphs 1 and 2 of Schedule 2 to the Criminal Justice Act 2003 (c. 44).

- (c) in paragraph (2)—
- (i) after “summons” (in each place) insert “or requisition”,
 - (ii) after “an offence mentioned in” insert “Part 1 of”;
- (d) after paragraph (2) insert—
- “(2A) Where a summons or requisition has been issued in respect of an offence mentioned in Part 2 of the Schedule to this Order, proceedings for that offence cease to be specified when the summons or requisition is served on the accused unless—
- (a) a concise statement of such facts relating to the charge as will be placed before the court by or on behalf of the prosecutor if the accused pleads guilty; or
 - (b) a copy of such written statement or statements complying with subsections (2) (a) and (b) and (3) of section 9 of the Criminal Justice Act 1967 as will be so placed in those circumstances,
- is served upon the accused with the summons or requisition.”;
- (e) after paragraph (3) insert—
- “(4) Proceedings for an offence mentioned in the Schedule to this Order cease to be specified if at any time a magistrates’ court indicates that it is considering imposing a custodial sentence for the offence.”.

4. Before paragraph 1 of the Schedule insert—
“PART 1

Summary Offences”.

5. For paragraph 3 of the Schedule substitute—
- “3. The offences under sections 3, 17(2), 18(3), 24(3), 26(1) and (2), 29, 31(1), 35, 42(b), 47(1), 87(2), 143, 163, 164(6) and (9), 165(3) and (6), 168, 170 and 172(3) of the Road Traffic Act 1988(4).”;
6. After paragraph 5 of the Schedule, insert—
6. The offence under section 12 of the Licensing Act 1872(5).
 7. The offence under section 80 of the Explosives Act 1875(6).
 8. The offences under sections 55 and 56 of the British Transport Commission Act 1949(7).
 9. The offence under section 91 of the Criminal Justice Act 1967(8).
 10. The offence under section 63B(8) of the Police and Criminal Evidence Act 1984(9).
 11. The offence under section 5 of the Public Order Act 1986(10).
 12. The offence under section 87(1) of the Environmental Protection Act 1990(11).

(4) 1988 c. 52. Section 170 was amended by paragraph 72 of Schedule 4 to the Road Traffic Act 1991 (c. 40) and by S.I. 2000/726.
(5) 1872 c. 94.
(6) 1875 c. 17.
(7) 1949 c. xxix.
(8) 1967 c. 80.
(9) 1984 c. 60. Section 63B was inserted by section 57 of the Criminal Justice and Courts Services Act 2000 (c. 43).
(10) 1986 c. 64.
(11) 1990 c. 43. Section 87(1) was substituted, in relation to England and Wales, by section 18 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

13. The offence under section 12 of the Criminal Justice and Police Act 2001(12).
14. The offence under section 11 of the Fireworks Act 2003(13).
15. The offence under section 49 of the Fire and Rescue Services Act 2004(14).
16. The offences under section 12(3) and 14(3) of the Drugs Act 2005(15).

PART 2

Offences Triable Either Way

17. The offence under section 1(1) of the Criminal Damage Act 1971(16), but only if it is the prosecutor's case that—
 - (a) the offence was not committed by destroying or damaging property by fire; and
 - (b) the value involved, within the meaning of Schedule 2 to the Magistrates' Courts Act 1980(17), does not exceed £5,000."

25th October 2012

Dominic Grieve
Attorney General

(12) 2001 c. 16. Section 12 was amended by Schedule 8 to the Police Reform Act 2002 (c. 30) and paragraphs 119 and 121 of Schedule 6 to the Licensing Act 2003 (c. 17).

(13) 2003 c. 22.

(14) 2004 c. 21.

(15) 2005 c. 17.

(16) 1971 c. 48.

(17) 1980 c. 43. Schedule 2 was amended by section 2 of the Aggravated Vehicle-Taking Act 1992 (c. 11).

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EXPLANATORY NOTE

(This note is not part of the Order)

Section 3 of the Prosecution of Offences Act 1985 sets out the functions of the Director of Public Prosecutions. These include taking over the conduct of all criminal proceedings instituted on behalf of a police force, unless the proceedings are specified in an Order made by the Attorney General under section 3(3). The Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999 (“the 1999 Order”) specifies proceedings for certain offences, but provides that proceedings cease to be specified if at any time a magistrates’ court begins to receive evidence in the proceedings, other than evidence received where the court proceeds in the absence of the accused, or received for the purposes of the court’s consideration of whether an accused who has been convicted of repeated motoring offences should be spared obligatory disqualification under the “totting up” provisions.

Articles 5 and 6 of this Order amend the 1999 Order by adding further offences, proceedings for which will be specified proceedings.

The further offences added by this Order are: careless or inconsiderate driving; failing to comply with a traffic direction; failing to stop, report an accident or give information or documents; being drunk in a highway, other public place or licensed premises; throwing fireworks in a thoroughfare; trespassing or throwing stones on the railway; disorderly behaviour while drunk in a public place; behaviour likely to cause harassment, alarm or distress; depositing and leaving litter; consumption of alcohol in a designated public place; contravention of a prohibition or failure to comply with a requirement imposed by or under fireworks regulations or making false statements; knowingly giving a false alarm of fire; failing to give a sample for the purposes of testing for the presence of Class A drugs; failing to attend an assessment following testing for the presence of Class A drugs; and criminal damage, not including arson and only if the value of the property involved is no more than £5,000.

Article 3(b) of this Order amends the 1999 Order with the effect that proceedings for any of the listed offences are not specified proceedings if they are commenced by the accused being charged by a custody officer at a police station, or if the accused is under 16 when the proceedings are commenced.

Article 3(2) of the 1999 Order provides that proceedings for offences listed in the Order (which were previously all triable only summarily) cease to be specified if a case summary or copy of the witness statements upon which the prosecution intends to rely in the event that the court proceeds under section 12 of the Magistrates’ Courts Act 1980 (“the 1980 Act”) is not served with the summons.

Article 3(c)(i) of this Order amends article 3(2) of the 1999 Order to reflect the alternative procedure for commencing criminal proceedings by written charge and requisition under Part 4 of the Criminal Justice Act 2003.

Section 12 of the 1980 Act sets out a procedure by which a court can proceed in the absence of the accused, provided that the proceedings were commenced by way of summons or requisition, a prosecution case summary or copy of the witness statements was served with the summons or requisition, and the court has received written notification that the accused wishes to plead guilty without attending. This procedure is available in the case of an offence triable only in a magistrates’ court. Criminal damage, which is being added to the Schedule to the 1999 Order, is triable either in a magistrates’ court or in the Crown Court (although there is provision in section 22 of the 1980 Act for a court to proceed as if the offence were triable only in a magistrates’ court if it is clear that the value of the damage caused does not exceed £5,000). The procedure under section 12 of the 1980 Act is not, therefore, available in relation to this offence.

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Article 3(c)(ii) and (d) of this Order further amends article 3(2) of the 1999 Order, and inserts a new article 3(2A), with the effect that proceedings for criminal damage, like those for the summary only offences listed in the Schedule, cease to be specified if a case summary or copy of the witness statement is not served with the summons or requisition.

Article 3(e) of this Order inserts a new article 3(4) in the 1999 Order, with the effect that proceedings for an offence cease to be specified if the magistrates' court indicates that it is considering imposing a custodial sentence.

A full regulatory impact assessment has not been produced for this Order as no impact on the private or voluntary sectors is foreseen.